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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,032	10/01/2004	Eric Berreklouw	2023-1003	4666
466 7590 02/19/2009 YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			EXAMINER TYSON, MELANIE RUANO	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 02/19/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/510,032

**Applicant(s)**

BERREKLOUW, ERIC

**Examiner**

Melanie Tyson

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 59-89 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 59-89 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is in response to the applicant's amendment received on 28 October 2008.

New claims 86-89 have been added.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 59-89 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Objections***

Claims 65 and 78 are objected to because of the following informalities: Claim 65 recites "has been made." This phrase is unnecessary and should be removed and replaced with, for example, "is located" to avoid confusion. Claim 75 recites "(316)." This reference is unnecessary and should be removed from the claim. Furthermore, all claims are objected to for topographical errors. Replace "stabiliser" with --stabilizer--. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 59-61, 63-65, 67, 69-71, 76-80, and 85-88 are rejected under 35

U.S.C. 102(e) as being anticipated by Ginn et al. (U.S. Patent No. 6,626,918 B1). Ginn

discloses an assembly (see entire document) comprising a stabilizer (12), an instrument (14) removably positioned in the stabilizer, one or more suction nozzles (42) coupled to one another running in the shape of a loop (the apertures surround the suction body of the stabilizer circumferentially, thus forming a ring-shaped loop) being in the radially outward/radially inward direction with respect to the loop shape (for example, see Figure 1), a head section (32), stops (36 and 38) for fixing the instrument and stabilizer in an axial position with respect to one another, a guide (lumen 16), a working duct (wall of stabilizer), an axial suction duct (the lumen of the stabilizer; "has been made" in that 12 is hollowed out), and an applicator including an elongated support member (28), a support ring (proximal end of head section), and an obstructing member (24 and 18; in that the ring may be exposed when slid down and unexposed/obstructed when retracted). Ginn's device is capable of performing all the functions as claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 62, 66, 68, 72-75, and 81-84** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ginn et al.**

Ginn discloses the claimed invention except for suction nozzles extending in an axial direction, or in an oblique direction, sensors, and a scale provided on the guide. However, it would be obvious to one having ordinary skill in the art to change the shape of the nozzles to be axial or obliquely outwards since the applicant has not disclosed that such configurations would provide an advantage or solve a stated problem and it appears radially extending nozzles would perform equally well. Furthermore, it is well known in the art to add sensors to medical instruments in order to provide for an additional guide, or navigation means, for locating the instrument within the body. Therefore, it would have been obvious to one having ordinary skill in the art to have modified Ginn with a sensor to easily navigate the instrument through the body to the correct location. It is also well known in the art to provide scales on devices in order to determine the position of the device. Examples of such scales are depth-locators on cutters, syringes, and stereotaxic devices. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Ginn with a scale in order to determine the position of the instrument relative to the stabilizer.

Regarding claims 72 and 73, it would have been obvious to one having ordinary skill in the art at the time the invention was made to separate Ginn's nozzles, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Regarding claims 74 and 75, it would have been

obvious to one having ordinary skill in the art at the time the invention was made to make Ginn's suction nozzles adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art.

**Claim 89** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ginn et al. in view of Brumbach (U.S. Patent No. 6,033,375)**. Ginn discloses the claimed invention except for a fixed position in which the stabilizer and instrument cannot rotate with respect to one another. Brumbach discloses an assembly comprising two instruments (36/14 and 44). Brumbach teaches a set screw (42) that is used to fix the instruments such that rotational movement is prevented between the two (for example, see column 5, lines 23-25). Thus, it would have been recognized by one of ordinary skill in the art that applying the known technique taught by Brumbach to Ginn's assembly would have yielded predictable results and resulted in an improved system, namely, a system that would positively interlock Ginn's stabilizer and instrument to prevent rotation between the two once the proper position has been determined.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Friday 7-7 (max flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Melanie Tyson /M. T./  
Examiner, Art Unit 3773  
February 12, 2009

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773